IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 33079 of 1998

Between:

M/s HIGUCHI LABORATORIES Rep By Its manager G.Sudhakar Rao S/o G.Venkateswar Rao, Sujana Appartments, Srinagar Colony, Vijayawada.

..... PETITIONER

AND

1 The Divisional Engineer
A.P.S.E.B., Operation Town,
Vijayawada.
2 The Asst. Divisional Engineer Operation,
A.P.S.E.B., Patamata,
Vijayawada.

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly in the nature of Writ of Mandamus declaring the action of the 2nd Respondent in issuing letter No.ADE/O/PTA/Tech. /F.Dkt/ D.No.1039/1997 dt 9.6.97 and letter No.ADE/O/PTA/Tech./ F.Dkt./D.No.1809/98 dt. 9.11.98 calling upon the petitioner to regularise the additional load in respect S.C.No.1854 and for payment of Development charges and additional consumption deposit etc. towards additional load without considering the representation dt 5.7.97 of the petitioner is arbitrary and illegal and against principles of natural justice and consequently set aside the same and pass.

Counsel for the Petitioner: MR.P.PRABHAKAR RAO

Counsel for the Respondent No.: MR.M.SREERAMULU REDDY

The Court made the following :

ORDER:

This writ petition is filed questioning the action of the second respondent vide letter 9-6-1997 and 9-11-1998 calling upon the petitioner to regularize the additional load in respect of S.C. No.1854 and for payment of development charges and additional consumption deposit etc.

The petitioner states that it is engaged in the manufacture of pharmaceutical formulations, and that it has become sick, and to keep it alive and going, it is being continued with minimum production, from out of its limited resources. The petitioner company, is said to have been purchased in the auction conducted by A.P. State Financial Corporation, and certain defunct machinery which was under the pledge with A.P.S.F.C., was kept in the petitioner premises. The main contention of the petitioner is that it is running its activity in a limited sphere with low tension contracted load of 20 H.P. The petitioner alleges that the

2nd respondent authority in the absence of the petitioner's representative inspected the petitioner unit on 4-2-1997 and issued notice dated

9-6-1997 calling upon the petitioner to regularize additional load and to pay Rs.39,000/- towards additional developmental charges and Rs.3,900/- for additional consumption deposit. In response to the said notice, the petitioner states that they made representation, and upon considering the same, the respondents dropped further proceedings. While so, it is the case of the petitioner that the respondents that in the first week of October, 1998, made several visits to petitioner's premises and threatened disconnection of power supply, for which petitioner issued a legal notice dated 6-10-1998. Thereafter, the second respondent issued notice dated 9-11-1998 calling upon the petitioner to regularize the unauthorized additional load detected by AAE/DPE.2/VJA and to make necessary payments for regularization of additional load within one month. Questioning the said notice, the petitioner filed the present

writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents

The second respondent filed a detailed counter affidavit denying the writ averments. It is stated that based on an inspection conducted by AAE/DOE-2 Vijayawada on 4-2-1997, the Assistant Divisional Engineer, Operations, Patamata has issued one month notice
dated 9-6-1997 requesting the petitioner to pay the development charges of Rs.39,000/- and additional consumption deposit of Rs.3,900/- for regularization of additional load of 25.73 HP as per the Board Instructions in B.P.Ms.No.281 dated 16-3-1996. The allegation that the inspection was made in the absence of the petitioner's representative is denied, and it is stated that at the time of inspection on 4-2-1997, one Mr. K.Prasad, Technician in the factory of the petitioner was present, and the entire inspection was carried out in his presence, and the said
Mr. K.Prasad has also acknowledged the recording of the total connected load as 19.75 HP + 19.380 = 45.73 HP. It is further stated that the notice dated 9-6-97 was served on the consumer and the receipt of the same was misplaced in the office, and as such, another copy of the notice dated 9-6-1997 was sent to the petitioner vide letter dated
9-11-1998. It is specifically contended that the present case of the petitioner is not one of malpractice or pilferage of energy, and as such, no penalty was imposed, and the notice dated 9-6-97 was issued as per the terms and conditions of supply for regularization of the additional load.

This Court while issuing notice to the respondents by order dated 27-11-1998 directed the respondents not to disconnect the power supply on condition of the petitioner depositing a sum of Rs.12,000/- within two weeks from the date of order, and after its compliance, the writ petition by order dated 16-7-1999, was admitted.

It is the specific case of the respondents that the petitioner at the time of inspection was found connected with load of 45.73 HP as against the contracted load of 20 HP, which fact was even acknowledged by one Mr. K. Prasad, who is working as Technician in the petitioner-company. Inasmuch as it is stated that the petitioner has exceeded the contracted load and utilized additional energy, the respondents cannot be found fault in demanding regularization of the additional

consumption in terms of B.P. Ms. No.281 dated 16-3-1996 and as per the terms and conditions of supply. Hence, the one month notice dated 9-6-1997 issued by the respondents, calling upon the petitioner to pay the development charges of Rs.39,000/- and additional consumption deposit of Rs.3,900/-, based upon an inspection made by the Assistant Divisional Engineer/DPE-2, Vijayawada, cannot be said to be illegal, and more so when it is a case of regularization of additional load and not a case of pilferage of energy.

For the fore going reasons, there are no merits in the writ petition, and the same is accordingly dismissed. However, it is needless to add that the amount deposited by the petitioner pursuant to the interim orders of this Court dated 27-11-1998, shall be adjusted towards the deposits to be made by the petitioner for regularization of the additional consumption. No costs.

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N.V.RAMANA,J

Date: 4-4-2005.

To

1 The Divisional Engineer
A.P.S.E.B., Operation Town,
Vijayawada.

2 The Asst. Divisional Engineer Operation,
A.P.S.E.B., Patamata,
Vijayawada.

3) 2 CD copies

4) 1 CC to MR.PRABHAKAR RAO

*Form-NIC-OGS/WP{**RAGHU**}*